

City of Coral Gables City Commission Meeting
Agenda Item I-1
February 9, 2016
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason
Commissioner Pat Keon
Commissioner Vince Lago
Vice Mayor Frank Quesada
Commissioner Jeannett Slesnick

City Staff

City Manager, Cathy Swanson-Rivenbark
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia
Development Services Director, Charles Wu

Public Speaker(s)

Agenda Item I-1 [11:35:48 a.m.]

Status update regarding City Commission's request to the Miami-Dade County Mayor and Board of County Commissioners to resolve the lawsuit between Miami-Dade County and the Lola B. Walker Homeowner's Association.

Mayor Cason: Let's do I-1, City Attorney.

City Attorney Leen: Thank you Mr. Mayor. This is a status update regarding City Commission's request to the Miami-Dade County Mayor and Board of County Commissioners to resolve the lawsuit between Miami-Dade County and the Lola B. Walker Homeowner's Association. I have some good news to report. Through this Commission's actions and through our discussions with the County and also with the Homeowners Association and the residents, I do believe there is some progress being made. For one, the City is going to be speaking next week at the County Commission meeting. I'll send each of you the details if you'd like to attend, just let me know in advance because we'll likely publicly notice the meeting also, because we'll have multiple City Commissioners present. I know that Commissioners Lago and Keon will be attending. The City Manager and I, if schedule permits, will also attend as well. I will attend no matter what. I know that it's the same day as the employee appreciation breakfast, I'm sorry about that that was the

day they gave us. They haven't given us a time yet, but I know that the City Manager has to be at that event, but if schedule permits I know that she'll be there too. That's the first thing that occurred. I think that's going to be very helpful, because it will allow our Commission to speak directly to the County Commission. You can explain the importance of this area of the City and why this community center needs to be built. It's obviously been over a decade. This lawsuit will only delay the building of any community center or any resolution of this matter for probably years, because it will take a couple of years to do the lawsuit and then there will be appeals, and so really the ultimate outcome here is to resolve the matter in a way that allows the community center to be built and also that protects the County's rights and their reverter and that protects the citizens' rights; and also, of course protects the City's regulatory authority. So that's the first issue. The second thing that happened was, the County Attorney's told me that they were reaching out, that they did reach out to the residents and they will be meeting with them to try to resolve the matter. At this point there is still saying the City cannot participate. I raised with them the fact that the City may really be the party here that can help bring this to a resolution because we have a lot of regulatory authority, including a dispute resolution mechanism that can bind the homeowners association, the foundation, and also the developer, and that if we are all working together we could find a solution. So they said that they would think about it and they may be something you want to raise with the County Commission. The third issue which I mentioned last time is they did reject our offer to pay for and provide a mediator, and I suggested George Knox. That's something that I plan to raise, if I have an opportunity to speak because the Commissioners will speak first and if they do give me time, I'll mention to them the County Commission about the mediator. I do think that's something that the County Commission would be interested in. This ultimately is going to have to be resolved at some point. The third issue that happened is that we did make a public records request to the County, and the County made a public records request to us; and I would note that the County made the public records request to us first. We responded, we provided them a lot of documents, we waived any fees. I thought that was the appropriate way to act with another government. The County is now moving, finally on the item. They are a much larger entity and I know, I'm not going to make any excuses for them, but it has taken a while to get action. The initial public records request, apparently there were no records responsive to, so we broadened our request at the time. And what we are requesting is basically communications relating to this matter, particularly with HUD, but other communications as well. The County is working with us. I just got a very nice e-mail from the County Attorney's Office. They are now taking a look at whether – initially they were not going to waive the fee, even though the City waived the fee for the County, the County was not going to waive the fee for the City. We were going to pay somewhere around \$1,200 for these records. We need the records and we want to look into this matter. So we were going to pay the fee, but what I heard today and in case they are watching, I do appreciate this; they are going to take another look at the fee. Because what I did was I raised with them that we found the administrative order that discusses the payment of fees for public records, and it does seem somewhat discretionary in nature, so they probably do have the authority to waive the fee or at

least reduce it for a fellow government entity acting for a public purpose, just as they are, and we are all trying to act for a public purpose. We may see the world a little differently, but everyone is acting in good faith here. So they are going to take another look at it; however we did tell them that we would ask the County Commission to waive the fee if staff didn't, and we made that clear to them so they are not surprised and when we get there and ask for a waiver of the fee. Also, we mentioned that we would like the AO in the future that contain an exception for other local governments making public records requests, assuming it's not abused, we've only really made two requests here, one of which had no records responsive to it, that they would typically waive the fee, just like the City waives the fee for other governmental entities. Anyway, we got a nice response today and they are going to take another look at it. So I'm hopeful that they'll work that out. Another issue is that we did get a hearing and the judge seemed very concerned about getting us a quick hearing on our motion to intervene or appear as an amicus in the lawsuit. So that's going to be heard next month. You are welcome to attend if you'd like, I'll send you the date for the hearing. We think we have a pretty good argument, I think we have a very strong argument, to be a little more formal, a very strong argument for intervention because we do have a planned area development on that parcel of land that's at issue where the Bahamian Village project would be. We also have a restrictive covenant that followed from the planned area development ordinance, and we also have a zoning, pardon me, a land use change that's recently been done, changing that area to commercial limited. So in my view and the view of Florida Law, the County is bound to those ordinances. Now, I've been asked for – two issues have come up regarding that; one, we did send a demand for assurances to the County asking for their assurance that if they succeed in this lawsuit and basically enforce their reverter, will they comply with the City's ordinances and restrictive covenant?- but really we are focused on this particular demand for assurances focused on the planned area development, the ordinance, and we also attached the land use change. The County Attorney's response was that they don't believe they have to give us these assurances, but that they will refer to their client and they will get back to us whether they'll give us those assurances. Now my view is that the County does not give us those assurances, we have an absolute right, I would think, to intervene in this suit because what the County is essentially doing is they are trying to enforce a reverter. If they enforce that reverter and their position is that it extinguishes our zoning ordinance well we are a directly affected party and I'll say I would think at that point we are an indispensable party, because if for example, we are not included in the lawsuit, particularly over our own objection, our own motion to appear in this lawsuit, that order will not apply to us. It will apply between the parties but we will have asserted our rights and have been denied the ability to intervene, we'll still have our ordinance. So I got a request from Commissioner Lago, a request for a City Attorney's opinion as to whether our zoning ordinances would apply, these regulatory documents would apply to the County. I'm working on that. I've issued a very similar one related to the School Board. I'll just tell you what my preliminary findings are. Yes, the County would be bound to our zoning ordinances and this is not an aggressive position we are taking, this is typical position under Florida Law. There is a Florida Supreme Court case called Temple

Terrace, which says that other government entities, such as School Boards, counties and state agencies, we are not even talking about just counties, but actual state agencies do need to follow local zoning ordinances, and now the City in determining how to apply those ordinances to those government entities does a balancing of interest, so we will consider whatever the County's interest may be, but it's a local zoning board, where in this case the City Commission who passed, you, who passed the planned area development, you would have a hearing, the County would have to appear. It would have to explain how they would want to be let out of the ordinance. You would hear from the public; you would hold a quasi-judicial hearing; you would make the determination and then that would be reviewable by sociary review to the Circuit Court, Appellate Division. The law is very clear on that. The only possible caveat to what I'm saying is that for School Boards Temple Terrace says they didn't reach that question. But then what happened was there was another case, I believe it was from the Second District, which did apply Temple Terrace to School Boards and there is no contrary precedent under Florida Law, and I issued an opinion to the School Board on behalf of the City indicating our view that they are based on these two cases read together, they are clearly bound by our Zoning Code. Now that doesn't mean that the City cannot give relief where there is a balancing of interest, and we've raised this with the School Board, and I'm not going to get into it at length, but in the West Lab matter the School Board, and this is true of School Boards across the state by the way, are very concerned about having local zoning ordinances apply to them, and we are working with them. I told them that when this is brought before the Commission, as long as we are balancing the interest the Commission can give relief under the Zoning Code. You can do that to the County as well. The issue though is that it's "Horn Book Law" that's what they say in law school, the Vice Mayor would say. It's clear, it's beyond debate. It's not like I'm giving you a difficult interpretation here. The Florida Supreme Court has said that this applies to other entities, we are simply enforcing rights that we have; and in addition, Section 6.02 of the County Charter, which is Miami-Dade County's own Charter, says that for zoning matters we can have a higher standard of zoning than the County. That's in the Charter and so they are bound to that, that's their Charter as well and that Charter applies to us. So that establishes this principal in the County Charter, so my opinion would be that the County is bound to our planned area development ordinance. I'm just finalizing that opinion; I will provide it to the County under the Zoning Code and the City Code which authorizes those sorts of interpretations. So my hope – anyway this went longer than I expected, I'm sorry. The goal here is not like who has what authority; the goal here is to help some residents that are lower income residents who are trying to build a community center and we are trying to help them and we are just getting a lot of resistance and that's why these issues come up.

Vice Mayor Quesada: Mr. "Horn Book," I mean Mr. City Attorney (laughter). I agree with your interpretation.

City Attorney Leen: Thank you Mr. Vice Mayor.

Commissioner Lago: That's an easy one right there. That's a home run.

Commissioner Keon: Does the School System agree with your interpretation?

City Attorney Leen: No. They do not. They have never...

[Laughter]

City Manager Swanson-Rivenbark: Mr. City Attorney I would stay out of the...we are working on a very positive relationship with the School District and we are respecting everyone's position.

Commissioner Lago: Just a quick question. Before we meet with the County, can we just get a simple update, not from staff right now, but just so we have it in our hands in reference to the permitting process for the proposed facility, community center that's going to be built on the site. I just want to make sure where we are so that we can really brief the County Commission and give them a deep understanding on how this project is ready to commence and how we are ready to break ground.

City Attorney Leen: Well, I'm going to answer part of that and then turn it over to Charles Wu our Development Services Director. The first part of that is yes. The Commission has indicated that we are expediting, you put that in the resolution, so everything's being expedited, staff has been extremely cooperative with that. They understand the importance of this issue. It went to the Board of Architects on an expedited review. It's been approved, it's now going to permitting, and that's where Mr. Wu's knowledge is.

Mr. Wu: We are in the process of permit review and we are going to try to hit all the trays as soon as we can, so it's in routing, permit process right now.

Commissioner Lago: So Charles, what is the timeframe for final review and if there has to be any changes or any accommodations by the applicant made, what are we expecting a time, just give me an idea.

Mr. Wu: I think I will go back and give that date to the City Manager. Let me get back with my staff to see what are the hot spots and we'll regroup to meet with those....to see what the issues are.

Commissioner Lago: Have they had County review?- DERM?

Mr. Wu: I don't believe so.

Commissioner Lago: Thank you.

Mayor Cason: Anything else on this?

City Attorney Leen: So one last thing. The opinion I'm going to give does affect Deering Bay as well, and not to get into another issue of dispute with the County, but I just want to say one thing and it's not about the School Board or the County or anybody. This is an important principal for the City. I hope people understand why we raise it. Our City is about plan – it's a planned City, it's all about zoning. That's what the City is about in a big part, and so we need to protect our Zoning Code; and we do have a good relationship with the County, we do, we have a very good relationship with them. But the County has other interests, they are a very, very large entity, and I believe the City has been very good and very effective at raising its Zoning Code and always reaching some accommodation with the County or with other governmental entities, such as the School Board to work these issues out; and that's our goal, that's always our goal, balancing of interest, work it out. I just wanted you to know that. But the law we just always have to raise because this is something that will be for decades and issues can come up where we do have to take action. Just like the issue with the pillars of the Metrorail or the windows at Coral Gables Elementary or the issue with the County relating to Deering Bay, these principals we have to be steadfast on, but it doesn't mean that we don't get along with the other governmental entity, but it's just my duty to raise them and to make sure we preserve that authority.

Mayor Cason: OK. Thank you.

[End: 11:50:23 a.m.]